



Guardianship and Nursing Home Residency

What Rights Does an Individual Retain?

Guardianship is imposed upon an individual, by a probate court, after notice and a hearing. The petitioner must prove two things: the individual is not capable of making informed decisions **and** guardianship is necessary.

A guardianship may be a full guardianship or a limited guardianship. In a limited guardianship, the specific powers of the guardian will be set out in the court Order and in the Letters of Guardianship, given the guardian.

Michigan law provides a full guardian can decide where the individual lives, and is responsible for arranging for the care, comfort, and maintenance of the individual. The guardian must take care of the individual's personal property, and if a conservator is not appointed, has power to handle income and assets.

As we know, federal and state law provides an extensive list of rights for residents of nursing homes.

Federal law provides if a resident has a guardian, the resident's rights are exercised by the guardian. If the guardianship includes the power to make medical decisions, it is the guardian, and not the resident, who authorizes or refuses treatment. Although a resident ordinarily has the right to leave the care of the nursing home and return home, a guardian can pre-empt that right.

There is nothing in Federal or state law that addresses which rights the guardian may **refuse** to honor.

We can assume there are rights a resident retains under guardianship, and other rights a court can take away, but only upon a specific finding during a court hearing.

Some important rights a resident always retains –

- Freedom of speech and religion
- Freedom from chemical and physical restraints except as medically necessary

- Right to complain to the nursing home, Bureau of Health Systems, and the ombudsman program about any care or treatment issue
- Right to request the probate court to terminate guardianship, limit the guardian's powers, or appoint a different guardian.
- Right to hire a lawyer

Rights an individual likely retains under guardianship, unless probate court explicitly restricts them.

- Having visitors of one's choice
- Using a telephone privately, and sending and receiving mail unopened
- Participate in activities

There are two further provisions of Michigan law worth considering. First, if communication is possible, a guardian has a duty to consult with an individual before making a major decision.

Second, a guardian has a duty to arrange services to restore the individual to the best state of mental and physical well-being possible so that the individual can return to self-management. The spirit of the law is to further the independence of the individual, consonant with an individual exercising her or his rights.

What if a guardian is not respecting an individual's rights?

Talk with the guardian, and try gentle persuasion. Offer mediation, which may be available for free from a community dispute resolution agency. Inform the individual of her or his right to go to probate court. There is no filing fee, and the individual can begin the process with a letter to the probate court judge.

For more information please call our toll free number:

1-866-485-9393